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No. 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 195

RESERVE LIFE INSURANCE COMPANY, a corporation,
Petitioner,

v.

DR. E. H. NORTH, JR.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment herein of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is printed in the Appendix hereto (App. 1a). It is reported at 255 F. 2d 240. The opinion of the District Court, reported at 155 F. Supp. 249, is printed in the

Appendix hereto (App. 5a) as well as at pages 11-14 of the appendix to appellant's brief before the Court of Appeals, submitted herewith (R. 11-14).*

JURISDICTION

The judgment of the Court of Appeals was entered on April 21, 1958. Rehearing was denied June 13, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Does not the decision of the Court of Appeals in this case involving a question of far-reaching importance conflict in principle with decisions of this Court as well as applicable principles of state law so that review by this Court is desirable if not necessary?

STATEMENT

This case began as an action for damages for fraud brought by petitioner insurance company against respondent, Dr. E. H. North, Jr. Petitioner is a resident of the State of Texas; respondent a resident of the State of North Carolina. Suit was brought in the United States District Court for the Eastern District of North Carolina, Elizabeth City Division, based on diversity of citizenship.

On September 21, 1951, petitioner issued hospitalization policy No. R-908861 to one John M. Cudworth (R. 5, 22). Said policy was renewable on January 21,

* Nine copies of the appendices to the briefs of both appellant and appellee before the Court of Appeals have been submitted to this Court with this petition. References to the appendix to appellant's brief are designated "R." and references to the appendix to this petition, "App."

1952 (R. 31), and it expressly provided that it was "renewable at the option of the Company only." (R. 145).

From November 23, 1951, to December 2, 1951, a date approximately two months after issuance of the policy, John M. Cudworth was confined in the Albemarle Hospital, Elizabeth City, North Carolina, under the care and treatment of respondent as attending physician (R. 5). At, or sometime after, Cudworth's admission to the hospital, respondent made the following entries on the hospital admission records with regard to Cudworth:

"DIAGNOSIS AND COMPLICATIONS

MAIN: *Probable Pulmonary Tuberculosis*

SECONDARY AND ASSOCIATED:

Poss Bronchogenic Carcinoma" (R. 12)

But on December 2, 1951, the date of Cudworth's discharge from the hospital, respondent filled out the Physician's Hospitalization Statement for the information of petitioner insurance company in part as follows:

"I, *Doctor E. H. North, Jr.*, have treated John M. Cudworth.

* * * * *

"2. Nature of sickness or disease? (List all)

Pneumonia — Type uncertain

* * * * *

"d. To what do you attribute the cause of the disease or condition?

Nothing specific" (R. 160-161)

At the time of issuance of the policy, petitioner had no information concerning the insured other than that contained in the application (R. 16). On the basis of the information contained in respondent's statement, petitioner paid Cudworth's hospital bill in the amount of $76.50 (R. 25) and renewed his policy when it would ordinarily have expired on January 21, 1952 (R. 31). If respondent's report had contained the true facts—that Cudworth had been hospitalized for probable pulmonary tuberculosis and possible bronchogenic carcinoma—petitioner would neither have paid the claim for the first hospitalization (R. 29) nor renewed the policy (R. 31). Neither claims for tuberculosis nor claims for carcinoma can be paid unless hospital confinement begins after the first six months of the policy (R. 154).

In the spring of 1952, after the initial six-month period of the policy had expired, Cudworth entered the Norfolk General Hospital where he died of carcinoma. As a result of this second hospitalization, petitioner was compelled to pay an additional $1,643.72 in benefits under the policy (R. 28).

The present action for damages for fraudulent misrepresentation resulted in a judgment in favor of respondent (R. 14). The District Court opinion made no attempt to illuminate the important relationship of trust existing between a doctor and an insurance company in this circumstance. The Court of Appeals affirmed.

REASONS FOR GRANTING THE WRIT

The Decision of the Court of Appeals, in a Matter of Great Importance, Conflicts in Principle With Decisions of This Court as Well as Applicable State Law So That Review by This Court Is Called For

The decision below involves a simple but fundamental issue of law. The issue is of vital importance to the insurance industry, the medical profession and to millions of policyholders throughout the country.

Hospitalization insurance is today an American institution. The amount of such insurance in force runs to billions of dollars; it affects every strand in the fabric of American life. In the conduct of this business, great reliance is placed on doctors of medicine. If this reliance is to continue, the relationship of the individual doctor to the insurance company relying on his word should be defined by the authoritative pronouncement of this Court. If the reliance is not to continue, a wholesale revision of the current procedures for administering hospitalization insurance is in order. Such a revision must necessarily involve substantially increased investigatory measures by the insurance industry. This can result only in additional costs of millions of dollars annually, sums which must ultimately be paid by the individual policyholders themselves.

In the present case petitioner followed the usual procedure, the procedure followed by hundreds of other insurance companies in hundreds of claims processed each day. It relied completely on the word of respondent as the attending physician. Respondent in his signed report to the insurance company stated unequivocally that he had treated the insured merely for "pneumonia" and attributed the condition

to "nothing specific". In filling out the hospital records at substantially the same time, respondent diagnosed the insured's condition as "probable pulmonary tuberculosis" and "poss[ible] bronchogenic carcinoma". At no place in Cudworth's *hospital* record did Dr. North make a single reference to "pneumonia", the disease which he told the insurance company was the principal reason for treatment.

Approximately five months after Dr. North's report, the insured died of bronchogenic carcinoma precisely the diagnosis made by Dr. North and entered on the hospital records of the insured's earlier confinement but carefully omitted from the doctor's report to the insurance company. It has been conclusively established that the company suffered damages as a result of its reliance on respondent's report.

These are the essential facts. The significant legal issue they present is whether or not a doctor has a duty of full and complete disclosure to an insurance company where, as in the circumstances of this case, he knows that great reliance will undoubtedly be placed on his word. This issue is illuminated by prior decisions of this Court and the Supreme Court of North Carolina.

This Court has long recognized that whoever perpetrates fraud to the injury of another is liable therefor, *Nudd* v. *Burrows*, 91 U.S. 426. The closest analogy to the present case is found in fraudulent recommendations of credit where it is the rule that a fraudulent recommendation will subject the person giving it to the damages sustained by the person trusting to it, *Russell* v. *Clark's Executors*, 7 Cranch 69. The writer of a letter recommending credit to a

third person is liable for a false impression made and authorized by the letter which was intended by the writer to deceive and mislead the addressee, *Iasigi* v. *Brown*, 17 How. 183.

With regard to the intent or state of mind necessary to constitute an actionable wrong, this Court has held that misrepresentation of a material fact, although made by mistake, will give a right to damages, *M'Ferran* v. *Taylor*, 3 Cranch 270. In law a statement recklessly made, without knowledge of its truth, but which is in reality false, is a false statement knowingly made, *Cooper* v. *Schlesinger*, 111 U.S. 148. Of even closer application to the present issue is the case of *Lehigh Zinc & Iron Co.* v. *Bamford*, 150 U.S. 665, where it was held that there need not be knowledge of the falsity of representations to hold one liable where he is *presumed* to know the facts.

In the *Lehigh* case this Court approved an instruction stating that "a person who makes representations of material facts, assuming or intending to convey the impression that he has actual knowledge of the existence of such facts, when he is conscious that he has no such knowledge, is as much responsible for the injurious consequences of such representations, to one who believes and acts upon them, as if he had actual knowledge of their falsity:" 150 U.S. at 673.

In *Gordon* v. *Butler*, 105 U.S. 553, this Court recognized that an action will lie for giving a false opinion in the case of a party possessing special learning or knowledge on the subject in respect to which his opinion is given.

Each of these cases is in principle directly applicable to the present case where respondent,

possessed of specialized knowledge and acting in a position of trust, gave a professional statement of fact under circumstances utterly inconsistent with the high standard to which he should be held.

Nor does the result reached by the courts below find support in the law of the State of North Carolina. Although both the District Court and the Court of Appeals refused to recognize that a doctor occupies a fiduciary position with regard to an insurance company in cases of this sort, it seems probable that the law of North Carolina would uphold the existence of such a relationship.

In *Abitt* v. *Gregory*, 201 N.C. 577, 160 S.E. 896, the court stated that a fiduciary relationship exists "in all cases where there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence." 160 S.E. at 906. As the court noted in *Vail* v. *Vail*, 233 N.C. 109, 63 S.E. 2d 202, this relationship exists wherever "confidence on one side results in superiority and influence on the other side." 63 S.E. 2d at 206. In *Hinton* v. *West*, 207 N.C. 708, 178 S.E. 356, the court cites with approval the statement in 25 C.J. 1149 that the fiduciary relationship "extends to any possible case in which a fiduciary relation exists in fact." 178 S.E. at 360.

The relationship between petitioner and respondent in the present circumstances makes it clear that special confidence was reposed in respondent. Any realistic view of this relationship must recognize that it has, in fact, all the characteristics of a fiduciary relation. It should be accorded this legal status if properly viewed under the law of North Carolina.

CONCLUSION

This case is of far-reaching importance. No real attempt has been made either by the District Court or by the Court of Appeals to define the relationship between a doctor of medicine and an insurance company under the circumstances presented here. The decision below finds no support in cases decided by this Court or in the applicable law of North Carolina and conflicts with principles on which these controlling cases are based. For the foregoing reasons the petition for certiorari should be granted.

Respectfully submitted,

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